

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

OTIS HENDERSON,

Plaintiff,

Case Number 15-10807
Honorable David M. Lawson

v.

EDWARD JACKSON, and
CITY OF DETROIT

Defendants.

/

**ORDER SUBSTITUTING TINA L. HENDERSON
AS THE PLAINTIFF IN THIS CASE**

On October 21, 2015, counsel for the plaintiff filed a suggestion of death notifying the Court that the plaintiff has passed away. On October 29, 2015, the parties filed a stipulation agreeing that Tina L. Henderson, as the personal representative to the Estate of Otis Henderson, be substituted as the plaintiff in this matter.

Under Federal Rule of Civil Procedure 25,

[i]f a party dies and the claim is not extinguished, the court may order substitution of the proper party. A motion for substitution may be made by any party or by the decedent's successor or representative. If the motion is not made within 90 days after service of a statement noting the death, the action by or against the decedent must be dismissed.

Fed. R. Civ. P. 25(a)(1). "In the Sixth Circuit, a section 1983 cause of action is entirely personal to the direct victim of the alleged constitutional tort. . . . Accordingly, only the purported victim, or his estate's representative(s), may prosecute a section 1983 claim." *Claybrook v. Birchwell*, 199 F.3d 350, 357 (6th Cir. 2000) (internal citations omitted).

The stipulation of the parties was timely filed and the claim is not extinguished. Ms. Henderson is the personal representative to the Estate of Otis Henderson and can therefore prosecute the pending section 1983 claim.

Pursuant to the stipulation of the parties,

It is **ORDERED** that Tina L. Henderson, as personal representative to the Estate of Otis Henderson, be substituted as the plaintiff in this case. The Clerk shall amend the docket accordingly.

s/David M. Lawson
DAVID M. LAWSON
United States District Judge

Dated: October 30, 2015

PROOF OF SERVICE

The undersigned certifies that a copy of the foregoing order was served upon each attorney or party of record herein by electronic means or first class U.S. mail on October 30, 2015.

s/Susan Pinkowski
SUSAN PINKOWSKI